

## APPENDIX E

FILED BY

J. J. Jany - H & V



\*20005847\*

RETURN TO

Helman & Sullivan

Hastings, Ne.

FEE 35.50

C4G-PAID

acct 008

(H & V City Clerk)

NUM 8-7-9

RD. COMP X ✓ 8:54

COMPARE ✓ H

CADAS — AO ✓

ADAMS COUNTY, NE.

FILED

INST. NO. **20005847**

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Janice & Johnson

REGISTER OF DEEDS

**ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 29<sup>th</sup> day of November, 2000, by and between **Bernice Edwards**, a single person, 733 Valley Chase, Hastings, Nebraska, ("Grantor"), and the **City of Hastings, Nebraska**, a Municipal Corporation, 220 N. Hastings Ave., Hastings, Nebraska, and **Dutton-Lainson Company**, a Nebraska Corporation, 1601 West Second Street, Hastings, Nebraska, and their assigns, ("Grantees")

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the County of Adams, State of Nebraska, more particularly described as follows:

The East 790 feet of a part of the South Half of the South Half of Section 8, Township 7 North, Range 9 West of the 6th P.M., Adams County, Nebraska, more particularly described as follows:

Beginning at the intersection line of the North and South half of Section line of Section 8, Township 7 North, Range 9 West of the 6th P.M., with the South line of the right-of-way of B. & M. River R.R. Co., now C. B. & Q. R.R., running thence East along said South line 1019.70 feet, thence South 737.55 feet to South line of said Section, thence West 1090.20 feet, thence North 722.37 feet to South line of said right-of-way, thence East along said South line 62.20 feet to place of beginning, except portion deeded to State of Nebraska for road purposes;

(the "Property"); and

3. WHEREAS, the Property is part of the North Landfill Subsite ("Subsite") of the Hastings Ground Water Superfund Site ("Site"), and placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication at 51 Federal Register 21054 on June 10, 1986; and

4. WHEREAS, the Property is subject to the Consent Decree entered into by the United States and the City of Hastings, Bernice Edwards, et al. on the 13th day of August, 1998, pursuant to Sections 106, 107, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and 9622 ("Consent Decree"); and

5. WHEREAS, in a Record of Decision dated September 30, 1991, (the "ROD"), the EPA Region VII Regional Administrator selected an interim source control remedy for the Subsite, which provides, in part, for the following actions:

verifying the integrity of the cap on the Property; upgrading the cap if necessary; grading the surface to promote surface water run-off and prevent surface water run-on; fencing the Property; and monitoring the vadose zone

6. WHEREAS, the parties hereto have agreed, pursuant to the terms of the Consent Decree, i) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the source control remedy and ii) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Subsite;

#### NOW, THEREFORE:

8. Grant: Grantor, on behalf of herself, her successors, and heirs, in consideration of the performance by the Grantees of response actions required by the Consent Decree, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees and their assigns, with general warranties of title, i) the perpetual right to enforce said use restrictions, and ii) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. Purpose: It is the purpose of this instrument to give the Grantee the right to remediate past environmental contamination and reduce the risk of exposure to contaminants for human health and the environment.

10. Restrictions on Use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantor: a) Ground water underlying the Property shall not be consumed. b) There shall be no disturbance of the subsurface of the land (the area deeper than 18 inches) by filling, drilling, excavation, or disturbing the topography

in any manner, except that farming of shallow rooted plants such as corn, soybeans, or milo is permitted.

11. Modification of Restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

12. Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property. The purposes for such access are:

- a) Implementing the response actions in the ROD, and those required by the Consent Decree, including, but not limited to, soil placement and replacement, debris removal, installation of drainage tiles, modification and maintenance of the surface cap, monitoring contamination levels in soil-gas and ground water.
- b) Verifying any data or information submitted to EPA.
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations.
- d) Monitoring response actions on the Subsite and conducting investigations relating to contamination on or near the Subsite, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples.
- e) Conducting periodic reviews of the interim source control remedy, including but not limited to, reviews required by applicable statutes and/or regulations.
- f) Implementing additional or new response actions if EPA determines, pursuant to the Consent Decree, i) that such actions are necessary to protect the environment because either the original interim source control remedy has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the interim source control remedy in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Reserved Rights of Grantor: Grantor hereby reserves unto herself and heirs, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein. Grantor is cultivating crops on her Property and may continue to cultivate shallow rooted crops such as corn, milo, and beans.

14. Rights of Entry: Nothing in this document shall limit or otherwise affect the Grantees' rights of entry and access provided by law.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice Requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 2000, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF ADAMS COUNTY, NEBRASKA ON \_\_\_\_\_, 2000 AS INSTRUMENT NUMBER \_\_\_\_\_ IN FAVOR OF, AND ENFORCEABLE BY, THE CITY OF HASTINGS OR DUTTON-LAINSON COMPANY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantees with a certified true copy of said instrument and, if it has been recorded in the office of the Adams County Register of Deeds, its recording reference.

17. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All reasonable costs and expenses of the Grantees, including, but not limited to, attorneys' fees, incurred in any such enforcement action shall be borne by the Grantor or her successors in interest to the Property. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Any forbearance, delay or omission by the Grantees to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantees under this instrument.

18. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the interim source control remedy, to the public or to the environment protected by this instrument.

19. Waiver of Certain Defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

20. Covenants: Grantor hereby covenants to and with the Grantees and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

21. Notices: Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Bernice Edwards  
c/o Mark Beck  
Attorney at Law  
747 North Burlington Suite 211  
Hastings, NE 68901

To Grantees:

City of Hastings  
c/o Hastings City Clerk  
220 North Hastings Avenue  
Hastings, NE 68902

Mr. Gayle McClure  
Dutton-Lainson Company  
2nd & St. Joseph Avenue  
Hastings, NE 68902

22. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of Nebraska.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of the Consent Decree. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be

invalid, as the case may be, shall not be affected thereby.

- d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
- e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the City of Hastings and its assigns and Dutton-Lainson Company and its assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.
- g) Termination of Rights and Obligations: The Grantor's rights and obligations under this instrument terminate upon transfer of the Grantor's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the City of Hastings and Dutton-Lainson Company their assigns forever.

20005847

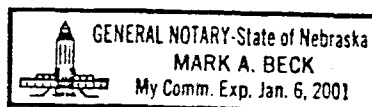
IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this 29<sup>th</sup> day of November 2000

Bernice Edwards

STATE OF NEBRASKA     )  
                                  ) ss:  
COUNTY OF ADAMS     )

The foregoing instrument was acknowledged before me on the 29 day of November, 2000 by Bernice Edwards, a single person.



Notary Public

This easement is accepted this 27<sup>th</sup> day of December, 2000.

CITY OF HASTINGS, NEBBRASKA  
A Municipal Corporation

By: [Signature]

DUTTON-LAINSON COMPANY  
A Nebraska Corporation

By: [Signature]